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1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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5
6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

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10 Ex parte OLA OLOFSSON, ULF PALMBLAD,
11 and LEIF JOHANSEN
12

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14 Appeal 2007-2248
15 Application 10/754,564
16 Technology Center 3700
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19 Oral Hearing Held: January 24, 2008
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21

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23 Before MURRIEL E. CRAWFORD, JENNIFER D. BAHR, and DAVID B.
24 WALKER, Administrative Patent Judges

25
26 ON BEHALF OF THE APPELLANT:

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35 The above-entitled matter came on for hearing on Thursday, January 24,
36 2008, at The U.S. Patent and Trademark Office, 600 Dulany Street,
37 Alexandria, Virginia, before Virginia Johnson, Freestate Reporting, Inc.

PROCEEDINGS

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3 MS. HALL: Calendar Number 43, Mr. Pavelko.

4 MR. PAVELKO: Good morning, Your Honors.

5 JUDGE CRAWFORD: Good morning.

6 MR. PAVELKO: I'd like to start off by noting that the Examiner has

7 withdrawn the 35 U.S.C. 112 rejection, first paragraph, so that the only

8 rejections we have to deal with today are the prior art.

9 This invention has to do with the joint between two panels. When you

10 bring two panels together and you use glue as the binder to hold them

11 together, you're fighting hydraulic pressure. The glue is not compressible,

12 so it's basically going to be squeezed out.

13 Prior to applicants' invention and as shown by the Parasin and primary

14 reference, when you put glue in there, the glue would be forced out the top

15 of the panel, resulting in a layer of glue on the surface of the panel. It would

16 have to then be cleaned off at some later time when it's either dried or in the

17 process of drying.

18 What applicants have done and what Parasin doesn't do is about the top

19 edges. That is the -- if you looked at the Parasin, panels 10 and 11, you can

20 see that there's a hole or gap (46) between those two panels, and the Parasin

21 specifically makes that gap. If you look at the portion of Parasin's drawing

22 labeled 18 which is the tip of his tongue, he says that the tip of the tongue is

23 made longer than the length of the groove, and that's found at column 3,

24 lines 28 to about 32. The tongue is preferably longer than groove (14) is

25 deep such that when tongue tip engages groove base (34) spaces (46) are

26 created between drawing panel edges 27 and 29 to allow for further

1 expansion and contraction of the joint. That's the essential teaching of this
2 primary reference. He wants to create a gap between panels. He has to have
3 that in his joint.

4 In our joint the panel top surfaces abut and below that abutting
5 surface, as specifically set forth in several of the independent claims, you
6 have a cavity, and that cavity below that abutting surface is for the purpose
7 of accommodating or permitting the glue to accumulate there. So the glue is
8 not squeezed out onto the top, there's no gap between the panels, and it's a
9 completely different joint.

10 The Examiner recognizes throughout the prosecution and even in the
11 answer that Parasin lacks that abutting feature, but he then goes to the
12 Finkell patent, the secondary reference, which is a completely different type
13 of panel joint.

14 In Finkell, it's a glueless -- what they call now a glueless joint.
15 There's no glue required. They're using interlocking elements here which
16 are shown in his Figure 2, and it would be 34 and 46. 34 and 46 interlock
17 and you don't need the glue at that point, so it's a completely different type
18 of joint.

19 But even if you did use Finkell, you would have to then somehow still
20 create the abutting top surface. Finkell says that the gap between the
21 surfaces with his type of glue-free joint can be reduced, but he doesn't say I
22 can eliminate that. He never says that the panel top edges or top surfaces
23 abut, and that's really the essence of applicant's invention. They abut the top
24 surface.

25 I don't see any laminate here but, you know, people are familiar with
26 laminate. It's a shiny kind of surface. It's not like this, but it's probably

1 more like that there. When you put two panels together you're going to have
2 a joint. In Parasin you've got a large gap between those two panels and it
3 creates a ridge, you know, an unsightly ridge, and the Examiner says well, of
4 course, dirt will accumulate there and so you want to eliminate that, but he
5 doesn't tell you how and that's the problem with Parasin.

6 Parasin was the -- I guess, typical of the art prior to applicant's
7 invention. They had the gap there. You forced the panels together. The
8 glue squirted out and you had a problem. We come along. We abut the
9 panel top surfaces. We provide a cavity right below that top surface or
10 below that top surface, and that's where the glue accumulates and is then
11 squeezed out the top.

12 In some of the independent claims we have even much more specific
13 features. Like in Claim 21 we have a hole which is a vent through one of
14 these boards, and that's shown in Figure 7 of applicant's drawings. You can
15 see that there's a vent. There's an arrow pointing downwardly. That vent is
16 through a board. The Examiner doesn't even try to make, you know, some
17 kind of argument that that is found in the references. He just refers to the
18 space between the two boards and says that's the equivalent of a vent
19 through a board, but it's not even close to be equivalent. It's not even close
20 to being a teaching of what we're claiming. So features like 21, 22
21 independent claims are not shown.

22 Now in 23, which is the method claim, also independent, we say that
23 the glue disposed between the tongue and the groove is directed away from
24 the upper surface and toward the lower surface of the boards. Again, at best,
25 Parasin has one line that says -- okay. This is at column 3, lines 15, 16 and
26 17. When assembling joints, glue may be applied to the tongue and groove

1 profiles. The application of glue is optional. That is his entire disclosure
2 about glue. There is no discussion about where it goes, what it does, how it's
3 directed and so forth. The Examiner at the last minute in the answer says --

4 JUDGE BAHR: I'm not sure that's true. I'm not sure that's true.
5 Doesn't it say that the spaces between 42, between the tongue bed and the
6 groove define a gap to accommodate excess glue?

7 MR. PAVELKO: Right. It says accommodate it, but it doesn't say
8 how it gets there.

9 JUDGE BAHR: How do you think it gets there?

10 MR. PAVELKO: You're asking me to speculate. You could put the
11 glue on the tip of -- on the top and bottom surface of the tongue, right?

12 JUDGE BAHR: Okay, and what's --

13 MR. PAVELKO: I mean you could put it in the groove. I don't
14 know. You know, it's speculation. There's no teaching. Basically there's no
15 teaching. And what we do is, again, we're trying to overcome this
16 hydrostatic pressure, permit the panels to be joined with glue but keep the
17 glue away from the upper surface so that it doesn't squeeze out and mar the
18 surface, have to be removed from the surface and so forth. And we've
19 provided structure, as specified in the claims, and the method which directs
20 the glue downwardly, and that's the whole point. We're taking it away from
21 the upper surface where it's really a problem.

22 If it's below the upper surface -- you know, this floor sits on a subfloor
23 of some kind, concrete or plywood or something, and whatever's down
24 between this panel and the subfloor nobody can see once the floor is
25 installed. So we can dump all the glue downwardly and it doesn't mar the
26 panel assembly or create any problems of cleanup. If there is excess pooling

1 of glue beneath the panels, it's not a problem for installation, unsightliness or
2 removal of the excess glue.

3 We do have many -- several independent claims here. I've basically
4 talked about the first independent Claim 14, and several of the other claims
5 share a lot of the same features. I would like to talk briefly, though, about
6 18, also an independent claim, which it says that the first and second board
7 defining a gap between them and a hole and fluid communication with the
8 gap, the hole having an opening below the groove. Again, this is shown, for
9 example, in Figure 7 of applicants' drawings, and that opening again directs
10 the glue below the surface of the panel.

11 And one other feature I would like to do is the guiding wedge which is
12 found, I believe, in --

13 JUDGE BAHR: 17.

14 MR. PAVELKO: -- Claim 17. Right, Claim 17. Claim 17 again has
15 a lot of commonality with Claim 14. It's also independent. But what it says
16 is it has a tongue and a groove. And it further says the tongue comprises at
17 least one guiding wedge on an upper surface or a lower surface whereby at
18 least one guiding wedge contacts an inner surface of the groove.

19 The purpose of this guiding wedge is really to give a height,
20 spatial, arrangement to the joint. For example, if you have like Parasin, he
21 has a space completely around his tongue and the groove except at the very
22 edge or tip where it contacts the groove. There's a space all the way through
23 there. So what will happen is the panels, even though interlocked like this,
24 will still have play in them. They will be able to move up and down, which
25 is not, you know, a solid joint.

26 What we would like to do and what we have said by this is we put a

1 wedge -- and that's shown again in applicants' drawings. For example,
2 Figure 1 shows one form of wedge and Figure 3 shows another form of
3 wedge -- in which those wedges fill that space. And so it performs or makes
4 the joint so much stronger.

5 The Examiner would want you to say that the front part of Parasin,
6 and I think here he's referring to the front page with regard to Figure 1 and it
7 would be Element 16 of the front part, would be the guiding wedge. But,
8 again, if you look at the actual drawing as shown of the assembled parts in
9 Figure 2, you don't really have that element in addition to the tongue. That
10 is the tongue itself, and there is no increasing of the strength of the joint by
11 providing the guiding wedge to fill the space between the tongue and the
12 groove.

13 So I mean we do have the invention expressed in various different
14 ways, various to the independent claims. We have some dependent features
15 that are not at all shown or attempted to be shown by the Examiner. And at
16 the end, as you mentioned, how does the glue get there? You know, when
17 you look at the reference -- I can't add any more to the reference than what it
18 says. And you can put the glue -- if you look at Parasin, you can put the
19 glue on the top surface here. You can put the glue in here. You can put the
20 glue, I guess, in here afterwards.

21 It's not clear at all how Parasin would do it. And when it's not clear, it
22 can't form the basis of a teaching that this is the function of directing the
23 glue in a certain direction. As I said, there's only one sentence about glue
24 and it says it's really optional. He doesn't go into solving the problem that
25 applicants have tried to do and have done in this case.

26 Are there any additional questions?

1 JUDGE BAHR: I have two questions. The first is Parasin has the
2 gaps 46 up at the top --

3 MR. PAVELKO: Right.

4 JUDGE BAHR: -- which serve the purpose of allowing for expansion
5 and contraction --

6 MR. PAVELKO: That's correct.

7 JUDGE BAHR: -- and both Appellant's invention and Finkell don't
8 have those gaps.

9 MR. PAVELKO: No, Finkell does have a gap.

10 JUDGE BAHR: Well, it may, it may not. We'll talk about it. But
11 you clearly don't. Appellant doesn't. How do you get around that expansion
12 -- problem, how do you solve that?

13 MR. PAVELKO: The boards act as basically a unitary floor and,
14 again, you have to envision this. For a floor this big, that's a difficult thing,
15 but for a much smaller floor like a typical bedroom, 12 x 15 or something
16 like that, the individual planks are maybe only 6 to 8 inches wide and you
17 glue them together and the whole floor acts as a unit.

18 JUDGE BAHR: Okay. So it's because they're glued together --

19 MR. PAVELKO: It then expands to the end --

20 JUDGE BAHR: -- as a single unit.

21 MR. PAVELKO: -- and that's why most installations tell you you
22 have to have a gap between the end of your floor that you're laying out and
23 the physical wall, because it can expand, but it now acts the unitary
24 structure.

25 JUDGE BAHR: But Parasin has glue, too, or optionally at least has
26 glue, as well --

1 MR. PAVELKO: Right, right.

2 JUDGE BAHR: -- but for some reason that wasn't acting as a unitary
3 structure?

4 MR. PAVELKO: No. It would be a unitary structure, but the
5 problem with Parasin is the glue would come up on the surface.

6 JUDGE BAHR: Well, they're not saying they've got gaps there for --
7 to accommodate the glue. That gap 46 they said was there to accommodate
8 for --

9 MR. PAVELKO: For expansion and contraction, right.

10 JUDGE BAHR: -- expansion and contraction. I'm just wondering
11 what the difference is.

12 MR. PAVELKO: Well, I think there he was envisioning that there
13 would be no glue because if it is glued together it's going to act as a unit
14 with the next adjacent panel and then that, in turn, with the next adjacent and
15 so forth. So I think what Parasin was doing was putting these planks
16 together but not gluing them and that's where the expansion/contraction
17 came in.

18 JUDGE BAHR: The other question I had -- oh, I'm sorry.

19 MR. PAVELKO: No, no. I just wanted to point out in the Finkell at
20 column 6, line 61 to 65, it says since the interlocking relationship between
21 adjacent flooring members limits the size of the gap allowable between
22 adjacent flooring members, relatively long flooring members (12) can be
23 produced. This may not be the case in other flooring systems.

24 So Finkell still has a gap at the upper surface and what he does about is
25 edges 40 and 42, as shown in Figure 2, below that upper surface. So what he
26 does is the upper surface still has a gap between, you know, the topmost

1 portion, and then below that it's forced together.

2 And so even if you looked at this -- and the Examiner made some
3 argument. We're trying to physically incorporate Finkell with Parasin, and
4 I'm saying how else would somebody eliminate this gap 46 other than doing
5 exactly the opposite of what he said, cutting off part of that nose and
6 permitting it to come in. And if you did that to eliminate this gap, there
7 would be basically no gap at all left between -- to accommodate any glue.
8 So you're just increasing the problem that you would have in the prior art
9 panels, is that the hydrostatic pressure is forcing the glue out of the joint, and
10 then you have to deal with that excess glue. And we do it all internally or
11 below the panel so it's not a problem to the installer or the customer. I'm
12 sorry. You had another question?

13 JUDGE BAHR: The other question, I just wanted to make sure.
14 Claim 23 in my understanding does not have the limitation about the upper
15 surfaces abutting.

16 MR. PAVELKO: That's correct.

17 JUDGE BAHR: And the only reason I ask that question is because
18 the Examiner applied the Parasin in view of Finkell combination and I think
19 Finkell is relied upon for that abutting feature and I'm just wanting to make
20 sure I'm not missing something. It looks like that application in Finkell
21 probably was --

22 MR. PAVELKO: Well, again, Finkell is a glue-free. Here we clearly
23 in the method have a glue in the joint and we're directing the glue away from
24 the upper surface. Again, since Finkell is, you know, glue-free, it's not --
25 you know, that has no teaching at all.

26 JUDGE BAHR: It's really --

1 MR. PAVELKO: And Parasin, although you can make guesses or
2 speculation as to where somebody might put glue and what might happen, he
3 doesn't teach it. Thank you very much.

4 JUDGE BAHR: Thank you.
5 (Whereupon, the proceedings concluded.)